IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR.

JUDGMENT

PETITIONER/APPELLANTS:

1. Kom Abhasiyan Shekhawati Gorawati Jumle Panch Jodhpur
2. Mohd Saddiq
3. Mohd. Ramjan alias Munna
4. Bundu Datawala
5. Ahmed Rajak

V E R S U S

RESPONDNETS:-

1. Idu Khan

PERFORMA RESPONDENTS:

2. Mangu Khan
3. Niyaz Mohd.
4. Additional Civil Judge (JD), No.5, Jodhpur.

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.880/2007
against the judgment dated 24.9.2007 passed in
S.B. Civil Writ Petition No.6100/2007.

Date of judgment : 22nd October, 2007

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. H.R. Soni for the appellants.

Mr. M.R. Singhvi for the respondents.

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BY THE COURT:- (PER HON'BLE RAJESH BALIA, J.)

Having heard learned counsel for the parties, we are satisfied that no interference is called for in this appeal against the order of learned Single Judge dismissing the writ petition filed by the appellants.

The appellants 5 in numbers filed the suit in the representative capacity under Order 1 Rule 8 alleging the property to be belonging to an unregistered society Kom Abhasiyan Shekhawati Gorawati Jumle Panch Jodhpur through formar Sadar Mohd. Hussein Bhati. The suit was for eviction of the property in which the plaintiff defendant Niyaz Mohd. was a tenant. During the pendency of the suit one Ahasan Mohd. moved an application for his substitution in place of Mohd. Hussain alleging that suit was filed on 26.5.1999 when Mohd. Hussain was Sadar of the Society. Thereafter in 2002 Mohd. Yusuf became Sadar for one year, entry of which was made in minutes of the books of Society which was witnessed by Mohd. Hussain. Said Yusuf Khan remained Sadar for 2 years and after said Yusuf Khan, Nijamudin became Sadar for 2004-05 and on 23.2.2005 Ahasan Mohd. was elected as Sadar. He therefore, claimed substitution with certain allegations that he has not been informed about the pendency of the suit filed by the Society for eviction of the respondents from the community's property.

That application in the first instance was rejected by the trial court on 6.5.2005 but the writ petition against the same was allowed. The learned Single Judge had allowed the writ petition observing that since the society is an elected

body, as and when change in officers takes place, necessary substitution may be made as a matter of right.

The order of learned Single Judge dated 10th October, 2006 was challenged by way of appeal. While dismissing the appeal in limine without notice to other side, the Division Bench has observed that since it is a representative suit and effect the interest of the community and allegations made in the application and its counter suggest that there appears to be different views as regards the management of the property while passing the order, the trial court will consider the bona fide of both the appellants and Ahasan Mohd. Belim. If the court comes to the conclusion that interest of the community is being effectively protected with due diligence by the appellants, it may not be necessary to implead Ahsan Mohd. Belim simply on the ground that he is new chairman of the managing committee. In that view of the matter, the trial court will not be influenced by the observation of the learned Judge that with the change of the Chairman / office bearers of the managing committee, periodically, substitution may be necessary.

After the order of Division Bench, the learned trial Judge allowed the application and instead of substituting the applicant to be as a party in substitution of Mohd. Hussain as Sadar directed his name to be added as member of the community having common interest in the properties. This later order of the trial Judge dated 10th September, 2007 was challenged by way of writ petition No.6100/2007.

The learned Single Judge has dismissed the writ petition holding that any judgment rendered in suit which is representative suit, any member of the society, who does not claim interest adverse to the community can be added and, therefore, there is no need to interfere in the order. Hence, this appeal.

It is interesting to note that originally the suit was filed only by Mohd. Hussain in his capacity as Sadar of Kom Abhasiyan Shekhawati Gorawati Jumle Panch Jodhpur. It is only because subsequently 5 other members made an application for being impleaded as party having interest in the community property and its management that those persons were added as party plaintiffs.

In the aforesaid circumstances, it cannot be doubted that Mohd. Husain in the first place has brought in suit as Sadar of the unregistered Society claiming himself to be an unanimously elected Sadar. This nature of office to an elected post is an admitted fact.

After notifications were issued under Order 1 Rule 8, 5 persons, who appealed were impleaded as party. It is also clear that said Mohd. Hussain has ceased to be Sadar which is apparent from the description of the parties in the present proceedings in which he has chosen to refer himself as a former Sadar.

In the aforesaid circumstances, the applicant Idu Khan had moved an application now that he had succeeded said Ahasan Mohd. He may be impleaded as plaintiff as Sadar of the Society plaintiff No.1. As no reply has been submitted to the application moved either by the Ahasan Mohd or Idu Khan and the procedure of selection has already been stated by the plaintiff Mohd. Yusuf in his plaint, the nature of post to be elected one is not in doubt.

In view thereof considering that he has no interest adverse to the property of the community and he is the person in whose possession the record of the society is to be there and who is in a better position to lead evidence was ordered to be impleaded as party as Sadar of the Society and allowed Mohd. Hussain to continue as party in his capacity as one of the members of the community.

It may also be noticed that before the learned trial Judge, it was also suggested by the learned counsel appearing for the original plaintiff that if Idu Khan is to be impleaded as party, he may be required to furnish in writing that he will secure the eviction of the tenant. The Court did not find it appropriate to seek such an undertaking from the applicant inasmuch as whether ultimately, the suit shop is to be vacated or not, it be decided by the Court and nobody else is in a position to give an undertaking to evict a person from the shop. So far as continuance of the suit was concerned, it was for the purpose of continuing the suit only, the application has been filed. There cannot be any apprehension of the

withdrawal of suit inasmuch as the suit can neither be withdrawn nor compromised without permission of the Court and that too after notice to the other parties. Therefore, the prayer for securing undertaking before impleading him as party was rejected.

It is, therefore, clear from the narration of facts and finding recorded in the nature of suit that suit was initially instituted by Mohd. Hussain simply representing the interest of community in the capacity of President of the Society. It is in these circumstances as and when the new president is elected / appointed, he becomes the repository of the trust which the society has to discharge towards the community property. It has been observed by the Division Bench while disposing off the appeal preferred by Mohd. Hussain and other plaintiffs that the interest of a person to be impleaded as party in the circumstances as Sadar is adverse to the interest of the community property, ordinarily the substitution of the name of such person in place of other one being contrary to the interest of community whom he represents has to be declined. Obviously the court has to decline such person as there is no absolute right to be impleaded as party.

The order passed under Order 22 Rule 10 whether granting or refusing leave is appealable under Order 43 Rule 1 and no second appeal lies against it. If the order is treated under Order 43 Rule 1 obviously no appeal has been provided, substitution or addition of a person does not effect the continuance of the suit at all. In the present case, when

the application of impleadment has been granted by the Trial Court and affirmed by the learned Single Judge and the order seriously does not affect the rights of the present appellant before us to oppose any action by the newly substituted Sadar in the matter of compromising or settling the dispute in relation to the suit property in any manner and to secure appropriate orders from the Court, no purpose is going to be served by interfering with the order.

Accordingly, the appeal fails and is hereby dismissed.

[BHANWAROO KHAN], J. [RAJESH BALIA], J.

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